

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	CASE NO.	18-41971
	§		
JEREMY DARRELL ARCHER and	§		
KRISTEN LEANN ARCHER	§		
	§		
DEBTORS	§	CHAPTER	7

MOTION OF GUARANTY BANK & TRUST FOR RELIEF FROM STAY
AGAINST 2010 KEARNEY FLATBED TRAILER, 2013 CARGO TRAILER,
2014 KAWASAKI MV, 1996 FEAT TRAILER, 2013 KAWASAKI MV, 2009
LAMAR TRAILER, NEW HOLLAND TRACTOR AND ALL ACCOUNTS OF
ARCHCO SUPERIOR CONSTRUCTION, L.L.C. WAIVER OF 30-DAY HEARING
REQUIREMENT AND REQUEST FOR HEARING IN PLANO, TEXAS

NOTICE TO PARTIES IN INTEREST
ANY OBJECTION OR REQUEST FOR HEARING MUST BE FILED WITH:
UNITED STATES BANKRUPTCY COURT
660 NORTH CENTRAL EXPRESSWAY, SUITE 300B
PLANO, TEXAS 75074

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order granting the relief sought. If an objection is filed and served in a timely manner, the Court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW GUARANTY BANK & TRUST ("Movant"), and files this its Motion For Relief

From Stay, and in support would show the Court as follows:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157.

Specifically, this is a proceeding to terminate, annul, modify, or condition the stay pursuant to 28 U.S.C. §157(b)(2)(G) and 11 U.S.C. §362(d).

II. INDEBTEDNESS TO MOVANT

2. Movant is the owner and holder of a Note made by Jeremy Archer and Kristen Archer in the original amount of \$48,654.61 dated July 20, 2015 (Loan No. Ending 0304, the "Archer Note"). In order to secure payment of the Archer Note, Jeremy Archer executed a Commercial Security Agreement dated July 20, 2015, as the Managing Member of ARCHCO Superior Construction, L.L.C., granting Movant a security interest in a 2010 Kearney Flatbed Trailer (VIN ending 2675). The Bank perfected its lien by notation on the title. A true and correct copy of the Archer Note and Security Agreement are attached hereto as Exhibit "A" and made a part hereof for all purposes.

3. Movant is the owner and holder of a Note made by ARCHCO Superior Construction, L.L.C. in the original amount of \$181,631.81 dated April 2, 2018 (Loan No. ending 0285, the "ARCHCO Note"). In order to secure payment of the ARCHCO Note: (a) Jeremy Archer executed a Commercial Security Agreement dated April 2, 2018 granting Movant a security interest in a 2013 Cargo Trailer (SN ending 4953) and a 2014 Kawasaki MV (VIN ending 0115) and a second Commercial Security Agreement dated the same date granting Movant a security interest in a New Holland Tractor; (b) Kristen Archer executed a Commercial Security Agreement dated April 2, 2018, granting Movant a security interest in a 1996 FEAT Trailer (SN ending 4759); and (c) ARCHCO Superior Construction L.L.C. executed a Commercial Security Agreement dated April 2, 2018, granting Movant a security interest in all accounts, 2013 Kawasaki MV (VIN ending 2962), 2009 Lamar Trailer (SN ending 2176), and 2010 Kearney Flatbed trailer (SN ending 2675). The Movant perfected its liens by notation on the titles and by filing a Financing Statement on the accounts and New Holland Tractor. A true and correct copy of the ARCHCO Note and Security Agreements are attached hereto as Exhibit "B" and made a part hereof for all purposes. Debtors personally guaranteed the ARCHCO Note.

4. On or about September 3, 2018, Debtors filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code.

III. RELIEF FROM STAY

5. The automatic stay should be terminated for cause pursuant to 11 U.S.C. §362(d)(1) in that Debtors have failed to maintain insurance on the Movant's collateral. Debtors' failure to maintain insurance on the Movant's collateral is cause to terminate the stay.

6. The automatic stay should be terminated for cause pursuant to 11 U.S.C. §362(d)(1) in that the Movant's collateral continues to decline in value through ordinary depreciation. Debtors have not offered nor provided the Movant with adequate protection. Debtors failure to provide the Movant with adequate protection in the form of periodic cash payments to protect its interest in the collateral is cause to terminate the stay.

7. The automatic stay should be terminated pursuant to 11 U.S.C. §362(d)(2) in that there is no equity in the property that secures the Movant's claim. Furthermore, the property is not necessary to an effective reorganization.

IV. ADEQUATE PROTECTION

8. Alternatively, if this Court refuses to terminate the automatic stay then Movant requests that the Court order the Debtors to make adequate protection payments to Movant in accordance with 11 U.S.C. §361(1). Debtors have not offered nor provided Movant with adequate protection of its security interest, nor is the Movant adequately protected.

V. REQUEST FOR HEARING IN PLANO, TEXAS

9. Movant hereby waives the thirty day hearing requirement and requests that the hearing on this Motion be set in Plano, Texas.

WHEREFORE, GUARANTY BANK & TRUST prays that the Court enter an Order Terminating the Automatic Stay so as to permit Movant to repossess and foreclose on its collateral and to dispose of the

collateral in accordance with applicable state law or in the alternative, for adequate protection of its interest in the property more fully described in the Notes and Security Agreements, and for such other and further relief to which it may be entitled.

Respectfully Submitted,

MCNALLY & PATRICK L.L.P

By: /s/ Glen Patrick
State Bar I.D. #15579500
ATTORNEYS FOR GUARANTY BANK & TRUST
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Tyler, Texas 75702
Telephone No. 903/597-6301
Facsimile No. 903/597-6302

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing was served either by electronic means or by regular first class mail on all parties listed below, all as per Local Rule of Bankruptcy Procedure 9013(f) this 9th day of October, 2018.

/s/ Glen Patrick

DEBTORS:
Jeremy & Kristen Archer
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